

RESTRICTIVE COVENANTS FOR STONEBROOKE ESTATES SUBDIVISION

WHEREAS, RANDALL HOMES LIMITED LIABILITY COMPANY, a New Mexico limited liability company, is the developer ("Developer") of that certain subdivision known as STONEBROOKE ESTATES SUBDIVISION (hereinafter the "Subdivision"), as shown on the plat for North Albuquerque Acres located in the County of Bernalillo, State of New Mexico, according to that certain plat recorded in Plat Book 2000C as Document 2000014245 of the records of the County Clerk of Bernalillo County, New Mexico, and bearing the recording date of February 11, 2000; and

WHEREAS, said Developer, pursuant to a general plan for the mutual benefit, protection and enjoyment of all the property owners in the Subdivision and for the mutual benefit, protection and enjoyment of prospective purchasers of lots in said Subdivision, desires to place thereon certain restrictive covenants as to the use and occupancy of all of the lots in said Subdivision, and shall be included in full or by reference in all deeds or real estate contracts thereto; and

WHEREAS, the following terms shall be defined terms for purposes of this Agreement and for all other documents relating to the Subdivision:


"Subdivision" shall mean the developed housing lots described on Exhibit "A" attached hereto which were developed from North Albuquerque Acres Lots 5 through 8, and 24 through 28 in Block 2, Tract 2, Unit 3, and filed as the Plat of Stonebrooke Estates within the City of Albuquerque, County of Bernalillo, as Document Number 2000014245 in Plat Book 2000C at page 51, on February 11, 2000.

"Restrictions" shall mean all covenants contained within this instrument.

"Owner" (sometimes referred to as "Member") shall mean the person, trust or any other entity who holds legal title to any lot within the Subdivision as identified to the Board of Directors of the Corporation.

"Corporation" shall mean the Stonebrooke Homeowners' Association, Inc., a New Mexico non-profit corporation organized for the purpose of representing the homeowners and enforcing these Covenants.

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"Articles" shall mean the Articles of Incorporation of the Corporation.

"By-Laws" shall mean the By-Laws of the Corporation which may be adopted or amended from time to time.

"Board" shall mean the Board of Directors of the Corporation as provided in the Articles and Bylaws of the Corporation.

"Developer" (sometimes referred to as the "Grantor") shall mean Randall Homes Limited Liability Company, a New Mexico limited liability company whose address is 8013 Edith, NE, Albuquerque, New Mexico 87113.

"Home Builder" shall mean Randall Schmille Construction, Co., a New Mexico corporation, whose address is 8013 Edith, NE, Albuquerque, New Mexico 87113, or any other contractor who purchases a lot from Developer or contracts to construct a residence upon a lot within the Subdivision.

NOW THEREFORE, said Developer does hereby impose the following Restrictions to run with the land:

1. LAND USE AND BUILDING TYPE:

No building or structure of any kind shall be erected, placed, altered, or permitted to remain on any lot except a detached single family dwelling, including a private two car (minimum) garage and a minimum 18' wide driveway, which shall be used as a private residence only. The permitted dwelling to be located on the conveyed premises shall be in the style or form or appearance approved by the Architectural Control Committee and must be of the same architectural style compatible with the neighborhood.

2. BUILDING LOCATION:

Placement: Except for the garage which must be a minimum of 20' from any lot line which it faces, no building shall be located on any lot nearer than 15 feet to the front lot line, nor nearer than 5 feet to any side lot line or nearer than 15 feet to any rear lot line nor nearer than 10 feet to any street. For the purpose of this covenant, eaves, steps and open porches shall not be considered as part of a building.

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3. ARCHITECTURAL CONTROL COMMITTEE:

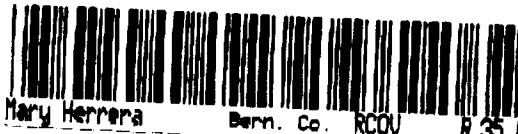
An Architectural Control Committee (hereinafter called "Committee") is hereby established, consisting of three representatives appointed by the Board. A majority of the Committee may designate a representative to act for it. The initial Committee shall consist of Marianne Murphy, 8225 Evangeline Ct, NE, Albuquerque, NM 87109, Randy Schmille, 8013 Edith, NE, Albuquerque, NM 87113 and Betty Schmille, 8013 Edith, NE, Albuquerque, NM 87113. Each initial member shall serve for a term of four (4) years and shall not be removed during such initial term, except for just cause. In the event of death or resignation of any member of the Committee, the remaining Members or member, if only one remains, shall have full authority to designate a successor. Neither the Members of the Committee, nor their designated representative, shall be entitled to any compensation for services performed pursuant to these Restrictions. The agreements and restrictions established herein, may be waived, terminated, or modified through a duly recorded written instrument executed by the Committee. At anytime prior to December 31, 2003, the Developer shall have the power, through a duly recorded, written instrument, to change the Membership of the Committee, or to withdraw the authority from the Committee, or to restore to the Committee any of its powers and duties. From and after January 1, 2004, the Committee shall be appointed and controlled by the Board.

4. ARCHITECTURAL CRITERIA:

The following criteria is hereby established for the Subdivision:

Architectural Style: Scottsdale, Traditional, Mediterranean, Brick Traditional, Pueblo, Territorial or a combination of the above.

Roof: Ceramic or concrete tile having a low reflectance level or asphalt shingles, or modified, or tar and gravel, or combination thereof.



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Stucco: Stucco shall be white, grey, brown, tan, or local earth tones and shall be approved by the Committee. No pink, blue or yellow stucco tones will be accepted.

Brick & Stone: Optional face brick or stone veneer shall be approved by the Committee.

Floor Area: The floor area of the main structure, exclusive of terraces, porches and garages, shall be not less than 1,600 square feet of heated area. The first floor of any two-story structure shall be not less than 600 square feet of heated area.

Garages: No exterior alteration to the garage door will be allowed. The garage door may not be removed regardless of any interior use of the garage area. The concrete/driveway areas of the lot may not be enlarged or altered without the prior written consent of the Architectural Control Committee.


Walls: Utility block standard grey shall be used throughout the Subdivision. Walls from building to side property line shall be located at the front of the residence. All walls on the common property line will be common walls. Side yard walls shall be located within 10' but not closer than 5' to the front of the house and shall match the setback from the neighboring house, if any. Courtyard walls are allowed.

Owners shall be responsible to reimburse the adjacent property builder for ½ the cost of the wall within thirty (30) days after completion of the wall.

Accessory Buildings: Accessory buildings will be permitted within the *building setback* area of a lot, subject to the following guidelines:

1. The accessory building shall not exceed six feet in height at the eaves, or seven feet in height at the peak of the roof; and
2. The accessory building shall not exceed an area of 80 sq.ft. (8'x 10') in size; and

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3. The accessory building is finished and roofed with the same materials and colors as used for the main residence structure; and

4. The accessory building is placed only on a temporary/movable foundation; and

5. If placed closer than five feet to the property line, the accessory building (a) must not at any point exceed the height of the adjacent perimeter wall, and (b), if encroaching into a side yard setback, must be screened by fence/landscaping from a curb view along such side lot line; and

6. Two copies of plans which show the location of the accessory building and main residence in conformance with these guidelines are submitted to the Architectural Control Committee and are approved in writing prior to placement of the accessory building on the lot.

Landscaping Requirements: Front landscaping shall be completed within thirty (30) days of construction or upon Owner occupancy, with the landscaping plans for front and side corner lots to be approved by the Committee. Maintenance of the common area landscaping shall be performed under contract with the Homeowner's Association and the yearly assessment by the Association to the Owner includes the common area landscaping maintenance. Maintenance of individual lot landscaping shall be by Owner.

From time to time, the Committee may issue, at its discretion, directives establishing additional criteria for the Subdivision, including but not limited to the exterior appearance of each structure, landscaping requirements, etc. Such directive shall be issued with the intent and purpose to insure a quality and homogeneous Subdivision for the mutual benefit, protection and enjoyment of purchasers of lots in said Subdivision. Those directives in effect at the time the developed lots are sold shall be made a condition of such sale. The Committee shall provide the Title Company which closes the sale a copy of each directive governing the referenced items.

5. COMMITTEE APPROVAL:

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No structure of any kind shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Committee as to compliance with these Restrictions, style, harmony of external design with existing structures, and as to location with respect to topography and finished grade elevation. The Committee's approval or disapproval, as required in these Restrictions, shall be in writing. In the event that the Committee, or its designated representative, fails to approve or disapprove, within thirty (30) days after the plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required, and the related covenant shall be deemed to have been fully complied with. All construction shall be completed within twelve (12) months from date of commencement, including landscaping and sprinkler systems.

6. PROHIBITION AGAINST FURTHER SUBDIVISION:

Tract D is a temporary drainage pond which is owned by the Developer and will be subdivided into three residential lots at a future date after the governmental authorities release Tract D from the pond easement. At that time, the three new residential lots will become a part of this residential subdivision and will automatically be subject to these covenants. Until the pond is converted to residential lots, Developer will own and maintain the pond, at its expense, and the pond shall not be assessed for maintenance of the Subdivision common area.

No lot, other than Tract D, may be subdivided, nor may a portion of any residential lot be sold, except to adjacent property owners for the purpose of increasing the size of adjacent lots, except on the prior written consent of the Committee.

7. EASEMENTS:

Easements for installation and maintenance of utilities and drainage facilities are re-

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served. Such easements are shown on and dedicated by recorded plat, or may be filed separately from the plat.

8. SIGHT TRIANGLE AT INTERSECTIONS:

No fence, wall, hedge or shrub which obstructs sight lines at elevations between three and six feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five feet (25') from the intersection of the street property lines extended. No tree shall be permitted to remain within such distance of such intersections unless foliage line is maintained at sufficient height to prevent obstruction of sight lines.

9. PROHIBITED STRUCTURES:

No structure of a temporary character and no mobile home, trailer, shack, garage, barn or other outbuilding shall be used on any lot at any time, either as a residence or otherwise, either temporarily or permanently except as heretofore referenced (see "Accessory Buildings").

10. DRAINAGE RESTRICTION:

The grades established for lots with rear yard drainage, are for control of storm water runoff and are controlled by the City of Albuquerque. Rear yard drainage may not be altered, filled or volumes changed for any reason. Further, reasonable care must be taken in planting landscaping and installing irrigation systems for watering landscaping to avoid damage to downstream properties. The following guidelines must be followed:

- A. Do not allow landscaping to change the overall drainage patterns established for development.
- B. The ground surface should slope adequately away from all portions of structures. A typical adequate slope is 6 inches in the first 5 feet.
- C. Shrubbery planted within 5 feet of foundation walls should be hand irrigated or irrigated with a carefully controlled drip irrigation system.

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- D. Grass installed within 5 feet of foundation walls should be hand watered or, if irrigated by sprinkler, should be very carefully controlled. Sprinkler heads should always point away from foundation walls.
- E. Decorative bark or gravel should be underlain by a geo-textile fabric (weed fabric) to allow evaporation of soil moisture. Polyethylene or other plastic underlayments are discouraged.
- F. If structures have gutters and down spouts, the down spouts should discharge a minimum of 5 feet away from foundation walls. If your structures drain by roof canals, the canals should discharge to splash blocks that carry water rapidly away from the foundation.
- G. It is also advisable to place splash blocks underneath sillcocks and to locate sprinkler valve boxes well away from foundations.
- H. Sidewalks placed close to foundations should not impede flow of water away from the foundation. The ground surface between the sidewalk and the foundation should be graded so that water flows over the sidewalk, or a shallow "french" drain system should be installed along the uphill side of the sidewalk and then piped beneath it to preclude water ponding between the sidewalk and the foundation.
- I. If mowing strips are installed to separate decorative gravel or bark from grass, the mowing strips should be perforated to allow drainage and preclude ponding of water, or ground surface grade should be carefully controlled to allow drainage or water over the mowing strips.

If any water line leaks or if irrigation system leaks are detected, they should be promptly repaired. And, if any low spots develop from the settlement of soils in utility trenches or other areas, they should be backfilled to maintain the grade so that surface water drains rapidly.

11. LIVESTOCK AND POULTRY:

No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except for the following:

- 1) No more than two dogs, cats or other household pets may be kept;
- 2) All household pets shall be kept in a humane and sanitary manner, in such a manner as not to be a nuisance or offensive to neigh-



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boring lots, and none shall be kept, bred or maintained for commercial purposes.

12. GRAPHICS AND LIGHTING:

No billboards or advertising signs will be permitted on any lot or on any building other than a name plate of the occupant of any residence upon which his professional title may also be added, and provided no such sign or name plate shall exceed a size of one square foot. Such signs must be of a uniform shape as designated by the Committee. Provided, however, that permission is hereby granted for the erection and maintenance of not more than one sign on each lot during the course of the construction of a new single-family dwelling and upon its completion, during the course of its initial sale, which sign shall not exceed five square feet. All exterior lights must be so located as not to be directed toward surrounding properties or public rights-of-way.

13. NUISANCES:

No noxious or offensive activity of any kind shall be carried on upon any lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. No parking of any vehicles of any kind shall be permitted other than on designated driveway areas and in accordance with Paragraph #16 hereof. Owner agrees to provide usual and customary (i.e. mini-blinds, drapes, verticle blinds, etc.) window coverings at all windows on the street side of the residence within thirty days of closing the purchase. It shall be the responsibility of the Board and the Owners of vacant lots to keep said lots and all easement areas encompassed within the exterior boundaries of said lots clear of trash, rubbish, noxious or offensive materials.

14. DESTRUCTION BY FIRE OR OTHER CASUALTY:

In the event that a structure is destroyed, wholly or partially by fire or any other casualty, said structure shall be properly rebuilt or repaired to conform to these

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Restrictions or, all of the remaining structure or structures, including the foundations and all debris, shall be removed from the lots.

15. COMMERCIAL ACTIVITY:

The aforesaid real property and the whole thereof, shall be used solely for single family dwelling purposes, and no business or commercial activity of any nature shall be conducted thereon, except that so-called "home occupations" shall be permitted upon prior written approval of the Committee and provided that such activity fully complies with all City and County zoning regulations, has no customer or client visitation, and such home occupation is inoffensive to the owners of the neighboring lots.

16. PERMITTED VEHICLES:

The Owner of each lot covenants and agrees that motorcycles, motorbikes and vehicles of a similar type, shall be allowed to operate only on dedicated streets. No visible parking or storage of motorcycles, motorbikes, RV's, commercial vehicles, boats or campers shall be permitted. No overnight parking is allowed on the streets.

17. TELEVISION AND RADIO ANTENNAS:

No radio, television or transmission towers or aerials shall be erected, placed or permitted upon any part of said property unless they are enclosed or shielded from view from the front elevation. No satellite dish shall be permitted unless specifically approved by the Committee.

18. RIGHTS AND DUTIES OF GRANTOR:

Any and all of the right, title, interest and estate given to or reserved by the Grantor herein or on the plat of Stonebrooke Estates Subdivision may be transferred or assigned to any person, firm or corporation by appropriate instrument in writing duly executed by the Grantor and recorded in the office of the County Clerk of Bernalillo County, New Mexico, and wherever the Grantor is hereby referred

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to, such reference shall be deemed to include its successors and assigns.

19. TERM OF RESTRICTIONS:


These Restrictions are perpetual and are to run with the land and shall be binding on all parties and all persons claiming under them from the date these Restrictions are recorded unless an instrument signed by the Developer has been recorded on or before December 31, 2002, agreeing to terminate or amend said Restrictions in whole or in part. On and after January 1, 2003, these Restrictions may only be amended by an affirmative vote of 2/3rds of the Owners of the lots included herein with each lot representing one vote and an instrument signed by the entire Board of the Corporation certifying the vote and stating the amendment.

20. TITLE OTHER THAN BY PURCHASE OR GIFT:

Should any mortgage or deed of trust be foreclosed on the property herein conveyed, then the title so acquired and the person or persons who thereupon and thereafter become the Owner(s) of such property, shall be subject to and be bound by all the restrictions established herein.

21. HOMEOWNERS ASSOCIATION:

The Owner of each lot shall own one Membership in the Stonebrooke Estates Homeowners' Association, which Corporation shall be established and maintained to maintain the perimeter walls, easements and common area belonging to the Corporation. All dues and assessments adopted pursuant to rules and By-Laws by such Corporation shall be paid by such Owner on a monthly or annual basis and upon failure to pay such dues and assessments, such unpaid dues and assessments shall become a lien upon the lot belonging to such owner which lien is hereby established by the recording of these Restrictions and shall relate to the date of the filing of these Restrictions for priority in enforcing the lien rights.

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22. COMMON AREA-LANDSCAPING:

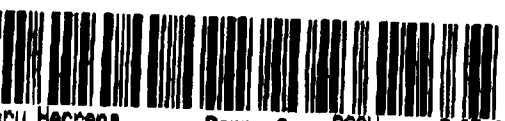
The signage area on Lot 45, all of Tracts A, B and C located within the street right-of-way, the area outside the perimeter wall between the curb and sidewalk, together with the area between the curb and sidewalk within the Subdivision ("Common Area") shall not be altered. The front area between curb and sidewalk with the Subdivision will be grass maintained by the Association, but watered by individual lot owners. All Common Area, except for the grass area between the curb and sidewalk within the Subdivision, shall be watered by a common water meter and charged to the Homeowners Association as a Common Area cost. Also, all maintenance of the Common Area landscaping shall be a Common Area cost charged to the Homeowners Association.

23. ENFORCEMENT:

All issues of interpretation or application of these Covenants and the Rules and Regulations adopted under these Covenants must first be presented to the Association for resolution. An appeal of the Association decision must be delivered in writing to the President of the Association within fifteen (15) days after the date on the notice of decision. The appeal shall be submitted to binding arbitration in Albuquerque, New Mexico, and an open hearing must be held within thirty (30) days from the date the written notice of appeal is received by the Association President.

At the annual meeting of the Association, the property owners shall elect one or more individuals who shall serve as an "Elected Independent Arbitrator." An Elected Independent Arbitrator shall be paid a reasonable hourly compensation for his duties and such compensation shall become part of the arbitration costs which shall be assessed against the losing party.

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The arbitration panel which shall hear the dispute shall consist of one Elected Independent Arbitrator plus each side of the controversy shall have the option, but are not required, to appoint a non-compensated panel member who must be a residential real estate developer, an attorney specializing in real estate development, an appraiser who has experience in appraising residential subdivisions, an architect or engineer who is active in residential subdivision design and development, or a city planner who has experience in planning residential subdivisions.

The arbitration panel shall hold an open hearing to receive written and oral testimony concerning the issues in conflict. The panel shall then issue its written opinion which shall clearly set forth its findings of fact, its application of the Covenants and the Rules and Regulations of the Association, together with all governmental ordinances and statutes, and state its decision in a manner which includes a statement of action required to cure the violation, if so judged, and an award of costs. The arbitration panel shall clarify its decision, if required by either party, by responding to written inquiries which are submitted within ten (10) days after the date of the decision.


The decision of the arbitration panel shall be entered as a judgement when filed with the District Court in Bernalillo County, New Mexico in accordance with the provisions of § 44-7-14 NMSA 1978 Comp.

Grantor, the Committee, or the Owner of any lot shall have the right to bring an action to enforce or prevent violation of these Restrictions and to recover reasonable attorney's fees and costs in connection therewith.

24. SEVERABILITY:

Invalidation of any one of these Restrictions by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

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25. SUCCESSORS IN INTEREST:

This agreement shall be binding upon the Developer, his successors and assigns whether referred to in this agreement as Developer, Grantor, owner, or Architectural Control Committee.

26. POWER OF ATTORNEY:

The owners of all property included within the Stonebrooke Estates Subdivision as shown on the Plat filed the 11th day of February, 2000, have granted to Developer the right and power to bind all owners under these Restrictions.

1st IN WITNESS WHEREOF, the Developer has set its hand this ___ day of JUNE, 2000.

DEVELOPER:

RANDALL HOMES LIMITED LIABILITY COMPANY

By: Randall Schmile, M.M.

HOME BUILDER:

RANDALL SCHMILLE CONSTRUCTION CO.

By: Randall Schmile, Pres.

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

On this 1st day of JUNE, 2000 before me personally appeared RANDALL J. SCHMILLE Managing Member of RANDALL HOMES LIMITED LIABILITY COMPANY, a New Mexico limited liability company.

Joanna Muth
Notary Public

My commission expires: 4/4/2002



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STATE OF NEW MEXICO)
) SS.
COUNTY OF BERNALILLO)

On this 1st day of JUNE, 2000, before me appeared RANDALL J. SCHMILLE, to me personally known, who, being by me duly sworn did say that he is the PRESIDENT of RANDALL SCHMILLE CONSTRUCTION CO. a New Mexico corporation.

Joanna Muth
Notary Public

My commission expires:
4/4/2002



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